

REMARKS

Claims 48-62 are pending and under examination in the instant application.

Rejections under Obviousness-Type Double Patenting:

Claims 48-62 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-16 of U.S. Patent No. 6,852,321; claims 1-18 of U.S. Patent No. 6,084,060; and claim 25 of U.S. Patent No. 6,280,724 (*see*, Office Action, page 2).

In response to the rejection of the pending claims over U.S. Patent No. 6,280,724 and U.S. Patent No. 6,084,060, please find attached herewith as **Appendix A**, a Terminal Disclaimer over these two patents. In view of the attached Terminal Disclaimer, Applicant respectfully avers that the grounds for this rejection have been overcome.

Applicant respectfully requests reconsideration of the obviousness-type double patenting rejection over claims 1-16 of U.S. Patent No. 6,852,321 for the following reasons.

First, the instant application is not commonly owned with U.S. Patent No. 6,852,321. Rather, the instant application is owned by ImClone Systems Incorporated, while U.S. Patent No. 6,852,321 is owned by ImClone Systems Incorporated and the Regents of the University of California. The differences in ownership correspond to differences in inventorship and the underlying fact that the '321 patent is directed to patentably distinct subject matter than the present invention. Accordingly, because of the differences in ownership, it is not possible to file a Terminal Disclaimer in the instant application over U.S. Patent No. 6,852,321.

Second, Applicants note that U.S. Patent No. 6,852,321 is not in fact prior art, in that it has a priority date of June 24, 1997, which is subsequent to the priority date of the instant application (*i.e.*, December 9, 1996). Indeed, the '321 patent is directed to patentably distinct later-developed subject matter.

Finally, Applicant notes that U.S. Patent No. 6,852,321 issued in view of the parents/priority documents of the instant application (*i.e.*, U.S. Patent No. 6,280,724, U.S. Patent No. 6,084,060, and WO 98/25457), and that the examiner of the '321 patent correctly determined that a Terminal Disclaimer was not required because the inventions were patentably distinct.

Applicants note that each of the priority documents of the instant application was considered prior to the issuance of U.S. Patent No. 6,852,321 (*see*, **Appendix B**: front page of U.S. Patent No. 6,852,321, specifically the sections entitled "U.S. Patent Documents" and "Foreign Patent Documents").

For the foregoing reasons, Applicant respectfully requests that the obviousness-type double patenting rejection over claims 1-16 of U.S. Patent No. 6,852,321 be reconsidered and withdrawn.

CONCLUSION

Claims 48-62 are pending in the Application. Applicant respectfully avers that these claims are in condition for allowance and request that a Notice of Allowance be timely issued.

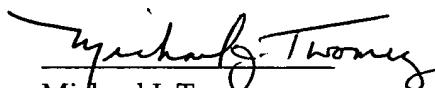
Applicant petitions for a three-month extension of time to respond to the Office Action of June 22, 2005. The Commissioner is hereby authorized to charge the requisite fees to Attorney Deposit Account No. 08-0219. No other fees are believed to be due; however, if any additional fees are due, please charge the requisite fees to Attorney Deposit Account No. 08-0219.

If the Examiner believes that a telephone interview would help expedite the successful prosecution of the claims, he is encouraged to contact the undersigned attorney at the telephone number indicated below.

Respectfully submitted,

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